

State of California
BOARD OF EQUALIZATION
SALES AND USE TAX REGULATIONS

Regulation 1699.5. DIRECT PAYMENT PERMITS.

Reference: Sections 7051.1, 7051.2, Revenue and Taxation Code.

(a) DEFINITION. As used in this regulation, "direct payment permit" means a permit issued by the board which allows the holder to purchase tangible personal property for use without paying tax or tax reimbursement to the retailer from whom the purchase is made, and which relieves that retailer from liability for tax on the transaction provided that the retailer obtains an exemption certificate as provided herein from the purchaser.

(b) REQUIREMENTS FOR PERMIT. A direct payment will be issued only if all of the following conditions are met:

(1) The applicant holds a valid seller's permit.

(2) The applicant agrees to report and pay directly to the board all tax liabilities which are transferred from retailers to the applicant as a result of exemption certificates issued in accordance with this regulation.

(3) The board determines that issuance of the direct payment permit will facilitate the collection of the tax. This requirement will be met only if the applicant has sufficient information processing resources to accurately and timely account for and report the tax liabilities assumed as a result of the direct payment permit (separately from other tax liabilities) and allocate the local tax portion of such liabilities to all of the cities, counties, redevelopment agencies, and districts involved.

(4) The board determines that issuance of the direct payment permit is to the mutual convenience of the board, the applicant, and the retailers whose tax liability will be reported and paid by the applicant. Issuance of the permit will not be deemed to be to the convenience of the board if the applicant is a government entity or if the applicant has had gross receipts from sales of tangible personal property of less than \$75,000,000 and purchases of tangible personal property subject to sales or use tax of less than \$75,000,000 in any calendar quarter during the twelve months immediately preceding the application for the permit.

(5) The applicant has a record of timely payment of tax liabilities and is in such financial condition that issuance of the direct payment permit will not result in a tax loss to the state.

(c) (1) APPLICATION FOR PERMIT. An application for a direct payment permit must be in writing and provide information which supports the claim that the applicant meets the requirements for a permit. The application must include a certified financial statement and a detailed description of the information processing system which will be used to account for the tax liabilities assumed and allocate the local taxes involved.

(2) Within 30 days of receipt of an application for a direct payment permit the board shall inform the applicant in writing either that the application is complete and has been accepted or that the application is deficient and what additional specific information is required to make the application complete. Within 60 days of acceptance of a complete application the board shall approve or deny the issuance of a direct payment permit and notify the applicant in writing of its decision.

(d) REVOCATION OF PERMIT. Any direct payment permit issued pursuant to this regulation shall be revoked if the board determines that the holder no longer meets the requirements for the permit.

(e) RETURNS. On or before the last day of the month following each quarterly period, a holder of a direct payment permit shall file a return with the board in such form as the board may prescribe. The person required to file the return shall deliver it together with a remittance for the amount of tax due to the office of the board. The return shall show the aggregate gross receipts of retailers during the reporting period with respect to which the person filing the return has assumed responsibility for payment of the retailers' tax liabilities, the amount of such liabilities, and such other information as the board may require. This return shall be separate from and in addition to any returns required to be filed by the person to report his or her own sales and use tax liabilities.

Regulation 1699.5. *(Continued)*

(f) PREPAYMENTS. A holder of a direct payment permit shall make prepayments of the tax liabilities assumed in accordance with this regulation as prescribed in Section 6471 of the Revenue and Taxation Code. The prepayments shall be made as prescribed in Section 6472 of the Revenue and Taxation Code, except that the due dates of these prepayments shall be five days earlier than the due dates prescribed in that section. These prepayments shall be made separately from any prepayments of the person's own sales and use tax liabilities.

(g) ALLOCATION OF LOCAL TAX. Every holder of a direct payment permit must include with each direct payment tax return a schedule approved by the board allocating all local sales and use taxes and district transactions and use taxes to the cities, counties, redevelopment agencies, and districts to which the tax would have been allocated if it had been reported and paid by the retailers involved. The allocation shall be based on the place of sale as provided in Regulation 1802 and Regulation 1822. The board may require that the schedule be provided on computer tape in a format prescribed by the Board. If the local and district taxes are misallocated due to negligence or intentional disregard of the law, a penalty of 10 percent of the amount misallocated may be imposed.

(h) EXEMPTION CERTIFICATES. A holder of a direct payment permit may issue a direct payment exemption certificate to any retailer. The certificate shall be in substantially the following form and shall be valid only with respect to the calendar year for which it is issued.

DIRECT PAYMENT EXEMPTION CERTIFICATE

(Name of Purchaser)

(Address of Purchaser)

I certify that I hold direct payment permit No. _____
issued pursuant to the California Sales and Use Tax Law and that I am authorized to report and pay directly to the State the applicable sales or use tax with respect to the property described herein which I shall purchase from

_____ during the calendar year _____. In the event that I fail to timely report and pay the applicable tax to the State, I understand that in addition to the tax liability, I will be subject to applicable interest and penalties. Description of property to be purchased: _____

Date: _____

(Signature of Purchaser or Agent)

(Title)

(i) (1) EFFECT OF CERTIFICATE. A party who issues a direct payment exemption certificate to a retailer shall be liable for the tax with respect to sales made pursuant to the certificate in the same manner as if the party were the retailer making the sale. The liability assumed by issuing the certificate must be included on the return filed for the period in which the sale was made rather than on the return for the period in which the property was used by the purchaser. The party who issued the exemption certificate is liable for the tax on the sale even if the property is lost, destroyed, removed from this state, or otherwise never used or consumed in this state.

(2) A direct payment exemption certificate shall not be substituted for a resale certificate because the tax consequences are different. Resale certificates shall only be issued with respect to property which the purchaser intends to resell and direct payment exemption certificates shall be issued only for property purchased for use or other consumption.

(3) A retailer who timely takes a direct payment exemption certificate in good faith from a person who holds a direct payment permit is relieved from liability for the sales tax and responsibility for collecting the use tax with respect to retail sales to the person who issued the certificate during the period covered by the certificate. A certificate will be considered timely if it is given at any time before the seller bills the purchaser for the property, or at any time within the seller's normal billing and payment cycle, or at any time at or prior to delivery of the property

Regulation 1699.5. (Continued)

to the purchaser. The invoice or other evidence of sale issued by the retailer must clearly state that the sale was made pursuant to a direct payment exemption certificate in order to support a deduction on the retailer's sales tax return. If a retailer makes sales under both a direct payment exemption certificate and a resale certificate to the same customer, care must be exercised to identify which property is sold pursuant to each certificate. The retailer must segregate in his or her records, and on his or her sales tax return, sales made pursuant to a direct payment exemption certificate from sales for resale.

(j) INTEREST AND PENALTIES. All provisions of the Sales and Use Tax Law relating to interest and penalties apply to tax liabilities incurred under the provisions of this regulation in the same manner as to other sales and use tax liabilities. (See Section 1703 of Title 18 of the California Code of Regulations.)

History: Adopted October 19, 1988, effective January 14, 1989. Adopted Regulation 1699.5 (Direct Payment Permits), which provides the rules under which the Board of Equalization will issue a direct payment permit to a person holding a valid seller's permit. The direct payment permit allows the holder of this permit to purchase tangible personal property from a retailer without paying sales tax reimbursement for the sales or the use tax for the use of the property.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.